

IMPLEMENTING AGREEMENT
for the
WILDCAT WIND FARM PHASE I HABITAT CONSERVATION PLAN
by and between
THE UNITED STATES FISH AND WILDLIFE SERVICE,
WILDCAT WIND FARM, LLC
AND
FIRST INDIANA RESOURCE, LLC

IMPLEMENTING AGREEMENT

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1.0 PARTIES

This IMPLEMENTING AGREEMENT (IA) for the Wildcat Wind Farm Phase I Habitat Conservation Plan (HCP), is entered into as of the ____ day of August, 2016, by and between the UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of the Interior of the United States of America (USFWS or the Service), WILDCAT WIND FARM I, LLC, a wholly owned subsidiary of E.ON CLIMATE & RENEWABLES NORTH AMERICA (WWF or Permittee), and FIRST INDIANA RESOURCE, LLC (FIR). In this IA, these entities may be referred to collectively as the “Parties” and each individually as a “Party.”

2.0 RECITALS

The Parties have entered into this IA in consideration of the following facts:

2.1. The Service has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and their habitats under various federal laws, including the Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. § 701 *et seq.*), the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. § 668 *et seq.*), the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(a) *et seq.*).

2.2. The ESA prohibits the take of species listed as endangered or threatened under the ESA. Under Section 10(a)(1)(B) of the ESA (16 U.S.C. § 1539(a)(1)(B)), the Service may issue permits authorizing the incidental take of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit, the applicant must submit a habitat conservation plan (HCP) describing, among other things, the steps the applicant will take to minimize and mitigate to the maximum extent practicable the impact of such take.

2.3. WWF currently operates a state-of-the-art wind energy facility (Wildcat or the Project) located in Tipton and Madison Counties, Indiana.

2.4. The operation and maintenance of Wildcat has been determined to have the potential to affect the federally listed endangered species, Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*), referred to as the “Covered Species.”

2.5. WWF, with technical assistance from the Service, has prepared the HCP and related documents for the Covered Species. WWF has developed a series of measures, described in the HCP, to minimize and mitigate to the maximum extent practicable the effects of take of the Covered Species incidental to WWF’s Covered Activities.

2.6. WWF and FIR have entered into a Mitigation Services Contract (as may be amended, modified or supplemented from time to time in accordance with the terms thereof, the MSC) pursuant to which FIR has assumed responsibility and liability for performing the services described in Section 5.3 hereof (Mitigation Services), subject to the terms, conditions and limitations, and for the payment and consideration, set forth in the MSC.

2.7. This IA defines the Parties' respective roles, responsibilities, liabilities and obligations and provides a common understanding of actions that will be undertaken under the HCP and its accompanying ITP, among other things, to minimize and mitigate take of the Covered Species incidental to Covered Activities on the Plan Area and the lands upon which mitigation will occur.

3.0 PURPOSES

The purposes of this Agreement are:

- 3.1. To ensure implementation of the terms of the HCP;
- 3.2. To transfer legal liability for performance of the Mitigation Services from WWF to FIR, subject to the terms, conditions and limitations set forth herein and in the MSC;
- 3.3. To describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in the HCP, ITP, and this IA; and
- 3.4. To provide "No Surprises" assurances to WWF consistent with the The HCP Assurances (No Surprises) Final Rule, 63 FR 8859-8873 (Feb. 23, 1998) (codified at 50 C.F.R. § 17.22(b)(5)).

4.0 TERMS USED

Terms used in this IA and specifically defined in the ESA or in the implementing regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this IA expressly provides otherwise. The following terms used in this IA will have the meanings set forth below.

4.1. "Changed Circumstances" means, pursuant to 50 C.F.R. § 17.3, changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP (*e.g.*, the listing of a new species or a fire or other natural catastrophic event in areas prone to these events). Changed Circumstances and the planned responses to those circumstances are described in Section 8.2.2 of the HCP. Changed Circumstances are not Unforeseen Circumstances, which are defined in Section 4.11 of this IA.

4.2. "Covered Activities" means certain activities carried out by WWF and its agents (including FIR, but only to the extent required under this IA) in the Plan Area and on the lands upon which mitigation will occur that may result in authorized take of Covered Species during the term of the HCP and ITP. These activities include those identified in Section 4.3 of the HCP.

4.3. "Covered Species" means the Indiana bat (*Myotis sodalis*) and the northern long-eared bat (*Myotis septentrionalis*), which the HCP sufficiently addresses to meet all the criteria for issuing an ITP under Section 10(a)(1)(B) of the ESA.

4.4. "Environmental Assessment" means the environmental assessment prepared pursuant to the National Environmental Policy Act (NEPA) to evaluate the environmental effects

of the Project and determine whether to prepare an Environmental Impact Statement or Finding of No Significant Impact (40 C.F.R. § 1508.9).

4.5. “HCP” means the habitat conservation plan prepared by WWF to address the requirements of Section 10(a)(2)(A) of the ESA which is incorporated by reference in this IA.

4.6. “ITP” means the incidental take permit issued by the Service to WWF under Section 10(a)(1)(B) of the ESA for take incidental to Covered Activities in the Plan Area and on the lands upon which mitigation will occur, as it may be amended from time to time.

4.7. “MSC” means the Mitigation Services Contract entered into between WWF and FIR, effective on the date set forth therein.

4.8. “Party” or “Parties” means any or all of the signatories to this IA.

4.9. “Permittee” means WWF.

4.10. “Plan Area” means the geographic area described in Section 2.4 of the HCP upon which Covered Activities will occur.

4.11. “Project” means the wind energy farm which WWF is currently operating in Tipton and Madison Counties, Indiana.

4.12. “SHMP” means the Summer Habitat Mitigation Plan to be prepared by FIR for approval by the Service pursuant to Section 5.2.2.3 of the HCP.

4.13. “Unforeseen Circumstances” means changes in circumstances affecting the Covered Species or the Plan Area that could not reasonably have been anticipated by the Parties at the time of the HCP’s negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species.

4.14. “Unlisted Species” means a species, including a subspecies or a distinct population segment of a vertebrate species, that is not listed as endangered or threatened under the ESA, including proposed, candidate, and other species.

5.0 OBLIGATIONS OF THE PARTIES

5.1. Obligations of the Permittee.

5.1.1. Permittee will fully and faithfully perform all obligations assigned to it under this IA, the ITP, the MSC, and the HCP, save and except for the Mitigation Services that FIR has agreed to undertake pursuant to this IA.

5.1.2. Permittee will pay to FIR the full Mitigation Fee (as defined in the MSC) required by the MSC in accordance with the terms and conditions set forth in the MSC, and shall provide evidence of such payment to the Service.

5.1.3. Permittee will promptly notify the Service of any lawsuits filed against it, and of any written notices or letters expressing intent to file suit challenging the issuance of, or compliance with, the HCP and ITP.

5.1.4. Permittee will notify the Service in writing within ten (10) days of the occurrence of any of the following: (1) any change in the registered name of WWF; (2) the dissolution of WWF; (3) the sale or conveyance of WWF; (4) bankruptcy proceedings by WWF as well as whether WWF is in receivership; (5) when WWF will no longer perform the Covered Activities in the Plan Area; (6) the revocation or suspension of WWF's corporate authorization to do business in the state or states in which it is registered to do business; and (7) the disqualification of WWF from performing Covered Activities under the ITP for either of the disqualifying factors listed in 50 C.F.R. § 13.21(c), as may be amended, or under any future USFWS regulation.

5.1.5. The authority issued to Permittee applies to all of Permittee's officers, directors, employees, agents, subsidiaries, contractors, and subcontractors and their officers, directors, employees, and agents, and consequently the Permittee is liable for any ITP violations that occur by any of the persons and/or entities referenced in this paragraph or by any other persons and/or entities under the control of the Permittee. Permittee shall conduct an educational program to inform all such persons and entities of the ITP and HCP's terms and conditions, and Permittee shall be responsible for supervising their compliance with those terms and conditions. All applicable contracts between Permittee and such persons and entities, where relevant, shall require their compliance with the HCP, this IA, and the ITP.

5.2. Obligations of the USFWS.

5.2.1. The Service will fully and faithfully perform all obligations assigned to it under this IA, the ITP, and the HCP.

5.2.2. Upon execution of this IA by all Parties and satisfaction of all other applicable legal requirements, the Service will issue Permittee an ITP under Section 10(a)(1)(B) of the ESA authorizing incidental take by Permittee of the Covered Species within the Plan Area and the lands upon which mitigation will occur incidental to the Covered Activities.

5.2.3. The Service will promptly notify Permittee if, for any reason (including court decisions or lack of appropriated funds), the Service is unable to fulfill any obligation associated with the HCP, ITP, or this IA.

5.2.4. The Service will promptly notify the Permittee of any lawsuits filed against it, and of any written notices or letters expressing intent to file suit challenging the issuance of, or compliance with, the HCP and ITP.

5.2.5. If Unforeseen Circumstances arise, the Service will not require, without the consent of the Permittee, the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural

resources beyond the level specified in the approved HCP if the Permittee is adequately implementing the approved HCP.

5.3. Obligations of FIR. Contingent upon receipt of payment from Permittee of the full Mitigation Fee in accordance with the terms and conditions specified in the MSC, and subject to WWF's continued compliance with the terms and conditions of the MSC, FIR will fully and faithfully perform all obligations assigned to it under this IA, including the following:

5.3.1. FIR shall provide written notification to the Service and Permittee upon receipt of payment of the full Mitigation Fee from Permittee.

5.3.2. FIR shall be responsible for performing, at its sole cost and expense, only the services expressly described in the MSC and on Schedule 1 attached hereto (the Mitigation Services).

5.3.3. FIR will promptly notify the Service of any lawsuits filed against it that relate to Mitigation Services or its performance thereof or that could reasonably be expected to have a material adverse effect on its ability to provide these Mitigation Services, and of any written notices or letters expressing intent to file suit challenging the issuance of, or compliance with, the SHMP, the HCP and/or the ITP.

6.0 ENVIRONMENTAL REVIEW UNDER NATIONAL ENVIRONMENTAL POLICY ACT

The Service's approval of the HCP and the issuance of the ITP to Permittee under Section 10(a)(1)(B) of the ESA are federal actions subject to review under NEPA (42 USC §§4321-4347, as amended). The Service is the federal lead agency under NEPA and has evaluated the HCP in compliance with NEPA in the Environmental Assessment (EA).

7.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this IA and the HCP, the terms of the HCP will control for purposes of interpreting this IA. The provisions of the HCP, ITP, and this IA shall be interpreted to be consistent with and complementary to each other. This IA is not intended to negate or nullify any provision of the ITP and/or the HCP. Notwithstanding the foregoing, FIR's sole obligations with respect to the Mitigation Services under the HCP and the ITP are set forth herein and in the MSC, and to the extent the ITP and/or the HCP conflicts with this IA or the MSC with respect to FIR's obligations or required services, this IA shall govern.

8.0 TERM

8.1. Initial Term. This IA and the HCP will become effective on the date that the Service issues the ITP. Upon the effective date, Permittee may take the Covered Species while carrying out Covered Activities in the Plan Area and on the lands upon which mitigation will occur, as authorized by and subject to the conditions of this IA, the HCP, and the ITP. This IA,

the HCP, and the ITP will remain in effect for twenty-eight (28) years from issuance of the original ITP, except as provided below.

8.2. Permit Suspension or Revocation. The Service may suspend or revoke all or part of the privileges authorized by the ITP if the Permittee does not comply with the conditions of the ITP or with applicable laws and regulations governing the permitted activity. Suspension or revocation of the ITP, in whole or in part, by the Service shall be in accordance with 50 C.F.R. §§ 13.27-29, as may be amended over time. Provided that Permittee has paid the Mitigation Fee to FIR, the Service may not suspend or revoke any part of the privileges authorized by the ITP as a result of a failure by FIR to perform its obligations under this IA. The Service's recourse for any failure to perform on the part of FIR shall be to draw upon the financial assurance mechanism provided by FIR to ensure implementation of the required mitigation activities.

8.3. Permit Renewal. When the ITP expires or when all authorized take has occurred, Permittee may apply for an extension or renewal of the ITP. If a written request for ITP renewal is on file with the issuing USFWS office at least 30 days prior to the permit's expiration, the ITP will remain valid while the renewal is being processed (50 C.F.R. § 13.22). Renewal of the ITP constitutes extension of the HCP and this IA for the same amount of time, subject to any amendments that the Service may require at the time of renewal.

8.4. Surrender. Permittee may surrender the ITP. Such surrender shall be in accordance with the regulations of the Service in force, if any, on the date of surrender (see 50 C.F.R. § 13.26). If no such regulations exist, Permittee shall provide thirty (30) days written notice to the Service of its intent to surrender the ITP. Notwithstanding any surrender of the ITP, Permittee shall remain responsible for any outstanding minimization and winter habitat mitigation measures, and FIR shall remain responsible for any outstanding summer habitat mitigation measures, that each is respectively required to perform under the terms of the ITP and this IA for take that occurs prior to surrender of the ITP. The ITP shall be deemed cancelled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the ITP, no further take shall be authorized under the terms of the surrendered ITP, and no further minimization or mitigation shall be required of the Permittee or FIR.

9.0 FUNDING

Permittee warrants that it has, and will expend, funds necessary to fulfill its obligations under the HCP as specified in Section 6.5 of the HCP. Permittee will notify the Service within thirty (30) days of the Permittee becoming aware of any material change in Permittee's financial ability to fulfill its obligations. In order to provide the Service with financial security for the implementation of mitigation required by the HCP, as set forth in Section 6.5 of the HCP FIR will provide the Performance Bond described in Section 6.5 of the HCP, and Permittee will provide the Letter of Credit described in Section 6.5 of the HCP, in the amount of \$1,758,350.00 to assure the Service that funds are available for any additional mitigation that may be required as a result of calculated take exceeding the expected amount. The Permittee's Letter of Credit will renew on an annual basis, and will remain in place for the duration of the ITP. The total amount of the Letter of Credit will be adjusted annually for inflation and reduced each year, where appropriate, to reflect the estimated cost of the financial commitment for any mitigation

activities potentially required but not yet completed. The FIR Performance Bond will remain in effect until FIR has fully satisfied the mitigation obligations expressly assumed by FIR hereunder, in an amount sufficient to guaranty performance of any remaining required mitigation activities and potential changed circumstances (which amount shall reduce over time as performance thresholds are achieved by FIR, as set forth in the Performance Bond).

10.0 MONITORING AND REPORTING

10.1. Annual Mortality Monitoring Reports. Permittee will provide the Service with the reports described in Section 5.3.5.2 of the HCP at the notice address then in effect for the Service, and will provide any available information requested by the Service to verify the information contained in such reports.

10.2. Other Reports. Permittee will promptly report fatalities of ESA-listed species or eagles to the Service. Permittee will report the discovery of any suspected or confirmed Indiana bat or northern long-eared bat fatalities to the Service within forty-eight (48) hours of discovery.

10.3. Certification of Reports. All reports will include the following certification from a responsible company official who supervised or directed preparation of the report:

“Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate and complete in all material respects.”

10.4. Monitoring by USFWS. Upon receiving reasonable notice, Permittee will allow the Service to conduct inspections and monitoring in connection with the ITP in accordance with USFWS regulations.

11.0 CHANGED CIRCUMSTANCES

11.1. Permittee-Initiated Response to Changed Circumstances. Permittee will give notice to the Service within seven (7) days after learning that any of the Changed Circumstances listed in Section 8.2.2.1, 8.2.2.2, 8.2.2.3 or 8.2.2.4 (except as may relate to impacts on summer habitat mitigation) of the HCP has occurred. FIR will give notice to the Service within seven (7) days after learning that any of the Changed Circumstances listed in Section 8.2.2.4 and 8.2.2.5 of the HCP has occurred (in each case, solely as may relate to impacts on summer habitat mitigation). Permittee or FIR, as appropriate, will modify its activities in the manner described in Section 8.2.2 of the HCP to the extent necessary to mitigate the effects of the Changed Circumstance on Covered Species as soon as practicable and will report to the Service on its actions. Except where consultation with the Service is required by Section 8.2.2 of the HCP, Permittee or FIR will make these modifications without awaiting notice from the Service. Notwithstanding the foregoing, FIR shall not be required to modify its activities if such modification would require FIR to exceed the scope of activities required to be taken by FIR under Schedule 1 attached hereto.

11.2. USFWS-Initiated Response to Changed Circumstances. If the Service determines that Changed Circumstances provided for in the HCP have occurred and that

Permittee has not responded in accordance with Section 8.2.2 of the HCP or that FIR has not responded in accordance with its responsibilities under Schedule 1 of this IA, the Service will immediately notify the responsible Party and will direct that Party to make the required changes. The Party will report to the Service on its actions or intended actions within thirty (30) days after receiving notice from the Service and shall make the required changes in the period of time necessary to implement the changes, as agreed to by Service and the responsible Party. Such changes are provided for in the HCP and hence do not constitute Unforeseen Circumstances or require amendment of the ITP or HCP. Provided that Permittee is properly implementing those aspects of the HCP for which it is responsible under this IA, the Service will not require Permittee to carry out any additional conservation and mitigation measures other than those identified in Section 8.2.2 of the HCP without consent of Permittee.

12.0 ADAPTIVE MANAGEMENT

12.1. Permittee-Initiated Adaptive Management. Permittee will implement the adaptive management provisions in Section 5.4.1 of the HCP when changes in management practices are necessary to achieve the HCP's biological objectives or to respond to post construction monitoring results or new scientific information. The proposed take limit has been established at no more than 162 Indiana bats and no more than 81 northern long-eared bats over the 27-year operating period authorized under the ITP, based on an average take of 6 Indiana bats and 3 northern long-eared bats per calendar year before accounting for the effect of minimization measures. WWF will implement minimization measures that are expected to reduce take by 50% below the authorized levels, and will implement adaptive management measures designed to maintain the rate of take at expected levels as dictated by the Evidence of Absence model and described in Section 5.4.1. No violation of the ITP shall be deemed to have occurred based solely on exceedance of the expected annual average take in a calendar year or expected total take over the permit term. Permittee will provide written notification to the Service of the implementation of any adaptive management measures as set forth in Section 5.4.3 of the HCP.

12.2. USFWS-Initiated Adaptive Management. If the Service determines that one or more of the adaptive management provisions in the HCP have been triggered and that Permittee has not changed its management practices in accordance with Section 5.4.1 of the HCP, the Service will notify Permittee and will direct Permittee to make the required changes. Permittee will report to the Service on its actions or intended actions within thirty (30) days after receiving notice from the Service and shall make the required changes in the period of time necessary to implement the changes, as agreed to by the Service and the Permittee. These changes are provided for in the HCP and hence do not constitute Unforeseen Circumstances or require amendment of the ITP or HCP.

12.3. Reductions in Mitigation. FIR will not implement adaptive management changes that may result in less mitigation than provided for the Covered Species under the original terms of the HCP unless the Service first provides written approval. In such circumstances, FIR may propose the adaptive management changes by notice to the Service, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on the Covered Species. Within one hundred twenty (120) days of receiving the notice, the Service will either approve the proposed adaptive management changes, approve

them as modified by the Service, or notify Permittee that the proposed changes constitute amendments that must be processed in accordance with Section 8.3.2 of the HCP.

12.4. No Increase in Take. This Section does not authorize any modifications that would increase the amount of take or increase the impacts of take of Covered Species beyond those analyzed under the original HCP and any amendments thereto. Any such modification must be processed in accordance with Section 8.3.2 of the HCP.

13.0 MODIFICATIONS AND AMENDMENTS

Permittee may request an amendment to the HCP by submitting a signed letter to the Service referencing the ITP permit number along with a twenty-five dollar (\$25) fee. The amendment request shall explain the specific amendment requested and provide the basis for same, along with appropriate supporting documentation. The Service shall process the amendment request in the same manner as the original HCP; provided, however, that additional NEPA review or modifications to the IA shall be necessary only if and to the extent that the amendment involves an issue or action that was not addressed in the original NEPA analysis or IA, respectively. If the circumstances necessitating the amendment were addressed in the original documents then only amendment of the ITP itself shall be necessary. Notwithstanding the foregoing, no amendment or modification to the HCP or this IA (or extension of the ITP) shall materially increase or alter FIR's obligations thereunder or hereunder, unless such amendment, extension or modification has been expressly approved in writing by FIR.

14.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

14.1. In General. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this IA and the HCP.

14.2. No Monetary Damages. No Party shall be liable in damages to any other Party or other person for any breach of this IA, any performance or failure to perform a mandatory or discretionary obligation imposed by this IA, or any other cause of action arising from this IA.

14.3. Injunctive and Temporary Relief. The Parties acknowledge that the Covered Species are unique and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this IA.

14.4. Enforcement Authority of the United States. Nothing contained in this IA is intended to limit the authority of the United States government to seek civil or criminal penalties for violation of or otherwise fulfill its enforcement responsibilities under the ESA.

14.5. Dispute Resolution. The Parties recognize that disputes concerning implementation of, compliance with, suspension of, or termination of this IA, the HCP, and the ITP may arise from time to time. The Parties agree to work together in good faith to resolve any disputes, using the informal dispute resolution procedures set forth in this section or other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances warrant, it may seek any available remedy without waiting to complete informal dispute resolution. Unless the Parties agree upon another dispute resolution

process, or unless an aggrieved Party has initiated administrative proceedings or litigation related to the subject of the dispute in federal court, the Parties may use the following process to attempt to resolve disputes:

14.5.1. The aggrieved Party will notify the other Party in writing of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

14.5.2. The Party alleged to be in violation will have thirty (30) days from receipt of notice, or such other time as may be agreed, to respond. During this time period, the Party may seek clarification of the information provided in the initial notice. The aggrieved Party will use its best efforts to provide the other Party with any information then available to it that may be responsive to these inquiries.

14.5.3. Within thirty (30) days after the response was received by the aggrieved Party or such other time as maybe agreed to by the Parties, representatives of the Parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all Parties, or will establish a specific process and timetable to seek a solution.

14.5.4. If any issues cannot be resolved through negotiations, the Parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

14.5.5. The Parties reserve the right, at any time without completing informal dispute resolution, to use whatever powers and remedies are available by law or regulation to ensure enforcement of or adherence to the HCP, this IA, and the ITP, including but not limited to, in the case of the Service, suspension or revocation of the ITP (solely for violations by Permittee) and civil or criminal penalties.

15.0 MISCELLANEOUS PROVISIONS.

15.1. No Partnership. Neither this IA nor the HCP shall make or be deemed to make any Party to this IA the agent for or the partner of any other Party.

15.2. Notices. Any notice permitted or required by this IA shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States Mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Party in writing:

If to the Service:

United States Fish and Wildlife Service
5600 American Blvd West, Suite 990
Bloomington, MN 55437-1173

with a copy to:

United States Fish and Wildlife Service
Bloomington Field Office
620 South Walker Street
Bloomington, IN 47403-2121

If to Permittee:

Wildcat Wind Farm, LLC
c/o E.ON Climate and Renewables
353 N. Clark, 30th Floor
Chicago, IL 60654

with a copy to:

M. Benjamin Cowan
Locke Lord LLP
2800 Chase Tower
600 Travis Street
Houston, TX 77002

If to FIR:

First Indiana Resource, LLC
c/o Resource Environmental Solutions, LLC
5020 Montrose Blvd., Suite 650
Houston, TX 77006
Attn: Russ Krauss

Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail, and such electronic notices shall thereafter be deemed effective upon receipt. Notices shall be transmitted so that they are received within the specified deadlines.

15.3. Severability. If any provision of this IA is found invalid or unenforceable, all other provisions shall remain in effect to the extent they can be reasonably applied in the absence of the invalid or unenforceable provision.

15.4. Entire Agreement. This IA, together with the HCP and the ITP, and solely with respect to WWF and FIR, the MSC, constitute the entire agreement among the Parties. Excepting the HCP and ITP, this IA supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied

herein. Notwithstanding the foregoing, in the event of any payment default by WWF under the MSC, or upon the filing of any voluntary or involuntary proceeding under bankruptcy laws by or against WWF which seeks to challenge the MSC or any of the payments made or to be made to FIR thereunder, FIR shall be permitted to cease performance of services and activities under this IA and the HCP.

15.5. Elected Officials not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this IA, or to any benefit that may arise from it.

15.6. Availability of Funds. The Service's implementation of this IA and the HCP is subject to the requirements of the Anti-Deficiency Act (31 U.S.C. § 1341) and the availability of appropriated funds. Nothing in this IA will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the United States Treasury. The Parties acknowledge this IA does not require the Service to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to the expenditures as evidenced in writing.

15.7. Duplicate Originals. This IA may be executed in any number of duplicate originals, and shall be deemed effective as of the issuance of the ITP. A complete original of this IA shall be maintained in the official records of each of the Parties hereto.

15.8. No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public under the ESA or other federal law, this IA shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone who is not a Party to this IA to maintain a suit for personal injuries or damages pursuant to the provisions of this IA. The Parties' duties, obligations, and responsibilities with respect to third parties shall remain as imposed under existing law.

15.9. Relationship to the ESA and Other Authorities. The terms of this IA shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this IA is intended to limit the Service's authority to seek civil or criminal penalties for violations of or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this IA is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the federal government. Nothing in this IA will limit the right or obligation of any federal agency to engage in consultation required under ESA Section 7 or other federal law; however, it is intended that Permittee's rights and obligations under the HCP, ITP, and this IA will be considered in any consultation affecting Permittee's use of the Plan Area. Nothing in this IA is intended to limit Permittee's rights under the HCP or the ITP, or its ability to exercise those rights under applicable law.


15.10. References to Regulations. Any reference in this IA, the HCP, or the ITP to any Service regulation or rule shall be deemed to be a reference to the regulation or rule in existence at the time an action is taken.

15.11. Applicable Laws. All activities undertaken under this IA, the HCP, or the ITP must be in compliance with all applicable state and federal laws and regulations.


15.12. Successors, Assigns, and Transfers. This IA and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the ITP shall be governed by the Service regulations in force at the time.

15.13. Authorized Parties. Each Party warrants that the signatory below is authorized to execute this IA on behalf of that Party.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this IA to be in effect as of the date last signed below.

BY: 
Paul Bowman
Senior Vice President
Wildcat Wind Farm, LLC

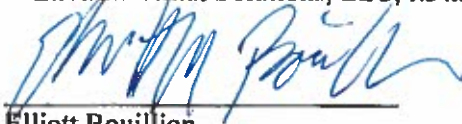
Date 11 AUG 2016

BY: 
Tom O. Melius
Midwest Regional Director
United States Fish and Wildlife Service
Bloomington, MN

Date Aug 19, 2016

FIRST INDIANA RESOURCE, LLC

By: Resource Environmental Solutions, LLC, its manager

BY: 
Elliott Bouillion
Chief Executive Officer

Date August 11, 2015

SCHEDULE 1

MITIGATION SERVICES TO BE PERFORMED BY FIR

Subject to the terms and conditions of Section 5.3 of the IA, FIR shall:

1. Perform the following services under Section 5.2.2.3 of HCP:
 - a. Acquire fee simple title to the real property described in Section 5.2.2.3 of the HCP (or, if FIR, in its reasonable discretion, elects not to acquire such parcel of real property, FIR shall use commercially reasonable efforts to either acquire one or more parcels in fee or cause one or more parcels to be legally encumbered with a permanent conservation easement to be held by a 501(c)(3) non-profit organization, which alternative parcels must be approved by the Service in accordance with the HCP), in each case to contain not less than 253 acres of land (in the aggregate) that are suitable for summer habitat preservation as contemplated by the HCP (the "Subject Property").
 - b. Prepare and submit a Summer Habitat Mitigation Plan (a "SHMP") for approval by the Service, which shall detail the planned summer habitat mitigation activities planned to be performed on the Subject Property.
 - c. Following acquisition of the Subject Property and approval by the Service of the SHMP, implement the summer habitat preservation activities on the Subject Property as described in the SHMP.
 - d. Post the Performance Bond (defined below).
 - e. Provide the holders of conservation easements that encumber the Subject Property with an endowment sufficient to ensure that funds are available to enforce the terms of such conservation easements (which endowment amount shall not be required to exceed \$36,300).
2. Perform compliance monitoring under the SHMP on the Subject Property, as contemplated by Section 5.2.2.4.1 of the HCP.
3. Prepare and submit reports for the SHMP on the Subject Property to the IDNR and USFWS Bloomington Field Office by December 30 at the end of each calendar year in which a mitigation action or monitoring is actively conducted under the SHMP on the Subject Property, as contemplated by Section 5.2.2.5 of the HCP.
4. Pursuant to Section 6.5 of the HCP, provide financial assurances for the initial SHMP on the Subject Property, including potential Changed Circumstances which may occur during the term of the ITP (but only to the extent FIR has been expressly allocated

responsibility under the following Section 5 of this Schedule 1), in the form of a performance bond (the “Performance Bond”), the value of which will coincide with the performance criteria outlined in the SHMP and the costs estimated to accomplish those milestones as set forth in Table 6-1 of the HCP, as well as the additional sum of \$88,550 to account for the occurrence of the Changed Circumstances for which FIR has been allocated responsibility under the following Section 5 of this Schedule 1. The maximum amount of the Performance Bond required to be provided by FIR hereunder shall not exceed the sum of \$202,400, which required bonding amount will be subject to reduction as set forth in the bond from time to time (i.e., as certain monitoring and/or performance hurdles are met by FIR under the SHMP).

5. Perform the following limited services under Section 8.2.2 of the HCP:
 - a. Under Section 8.2.2.3, consult with the Service and WWF regarding alternative methodologies and/or technologies to combat WNS that may be included in the SHMP for the Subject Property, and, to the extent expressly agreed by each of the Service, WWF and the Sponsor, implement such methodologies and/or technologies and monitor the same as contemplated by the HCP.
 - b. To the extent required by the Service under Section 8.2.2.4.1 of the HCP, suspend mitigation activities under the SHMP at the Subject Property.
 - c. Conduct restoration actions on the Subject Property to the extent required by Sections 8.2.2.5.1 (drought), 8.2.2.5.2 (fire), 8.2.2.5.3 (flood) and 8.2.2.5.4 (tornadoes) of the HCP.
 - d. Give notice to the Service within seven (7) days after learning that any of the Changed Circumstances listed in Section 8.2.2.4 and 8.2.2.5 of the HCP has occurred (in each case, solely as may relate to impacts on summer habitat mitigation).